

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-1434

United States of America,

Appellee,

v.

Javier Gallegos,

Appellant.

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Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: June 6, 2002

Filed: June 7, 2002

Before BOWMAN, FAGG, and RILEY, Circuit Judges.

PER CURIAM.

Javier Gallegos challenges the sentence imposed by the District Court¹ after he entered into a plea agreement and pleaded guilty to conspiring to distribute a mixture containing fifty or more grams of methamphetamine. See 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(B), 846 (2000). The District Court sentenced Gallegos to sixty months of imprisonment, which was referred to in the plea agreement and is the statutory minimum sentence, and five years of supervised release. Counsel has moved to withdraw on appeal pursuant to Anders v. California, 386 U.S. 738 (1967), and has

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

filed a brief arguing that the sentence should have been only fifty-one months of imprisonment and is excessive. Gallegos has not filed a pro se supplemental brief.

Having thoroughly reviewed the record, we conclude that in the written plea agreement, Gallegos knowingly and voluntarily waived the right to challenge his sentence on appeal. See United States v. Morrison, 171 F.3d 567, 568 (8th Cir. 1999). To the extent required, given the appeal waiver, we have further reviewed the record independently under Penson v. Ohio, 488 U.S. 75 (1988), and we find that there are no nonfrivolous issues.

Accordingly, we affirm. We also grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.